

1 DAVID DAVIS and PAGE GEARHART-DAVIS
2 PRO SE
3 PO BOX 3225
4 CLEARLAKE, CA 94522
5 (707) 995-0749

FILED

AUG 23 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT

THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

9 DAVID DAVIS and PAGE GEARHART-DAVIS,

Case No.: C 07-03365 EDL

10 Plaintiff(s),

**PLAINTIFF(s) DAVID DAVIS and PAGE
GEARHART-DAVIS OPPOSITION TO
DEFENDANT(s) MOTION FOR SUMMARY
JUDGEMNT, OR IN ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

11 vs.

12 CLEARLAKE POLICE DEPARTMENT,

13 Defendant(s)

Date: August 12, 2008
Time: 9:00 a.m.
Courtroom: E, 15th Floor
Judge: Elizabeth D. Laporte

16 **STATEMENT of PURPOSE**

17 The Plaintiff(s) David Davis and Page Gearhart-Davis hereby moves the
18 Court to deny Defendant(s) summary judgment on the grounds that Plaintiff(s)
19 not only have genuine issues of material facts but also have supporting
20 evidence to reflect it's claim. Defendant(s) have neither evidence nor
21 similar case laws to reflect their defense. Plaintiff(s) jointly ask the
22 Court to continue this case with scheduled trial date.

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TABLE OF CONTENTS

	<u>Page (s)</u>
I. INTRODUCTION	1
II. STATEMENT OF RELEVANT FACTS	5
III. ARGUMENT	12
A. Violation of 4 th & 14 th Amendment	13
B. Racial Profiling	15
C. Violation of 42 U.S.C. §§ 241 & 1985	15
D. Violation of 42 U.S.C §§ 242 & 1983	15
E. Faliure to Supervise Officer's Adequately	15
IV. CONCLUSION	17

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page (s)</u>
Atwater v. City of Largo 532 U.S. 318	13
Bygum v. City of Clearlake	16
Griffin v. City of Clearlake C-002504	16
Hernandez v. City of Clearlake C-99-3185	16
Hupp v. City Walnut Creek 389 F.Supp2d 1229	16
Simmons v. City of Clearlake C-98-1251	16
Terry v. Ohio 392 U.S. 1	12
Vespa v. City of Clearlake C-97-3756	16
<u>Constitutional Provisions</u>	<u>Page (s)</u>
U.S. Constitutional, Amended IV	6,8,11,12,14
U.S. Constitutional, Amended XIV	6,8,11,12,14
<u>Federal Statutes</u>	<u>Page (S)</u>
18 U.S.C. § 241	16
18 U.S.C. § 242	16
42 U.S.C. § 1983	16
42 U.S.C. § 1985	16
<u>State Statutes</u>	
California Vehicle Code § 27315	13
<u>City Policies</u>	<u>Page (s)</u>
Clearlake Police Department Policy 1020	9,10

1 **I. INTRODUCTION**

2 Plaintiff(s) brought this lawsuit against the City and it's employees
3 only after the continued harassment suffered at the hands of the Clearlake
4 Police Department.

5 Neither Plaintiff(s) nor Defendant(s) deny the confrontation that took
6 place on August 2, 2006. The Plaintiff(s) were the ones that took the
7 initiative to go and speak with the Clearlake Police Officers to try and
8 resolve the problem before it got out of hand. Plaintiff(s) were not only
9 denied the opportunity to speak with these officers but obviously these
10 officers took this matter personally in which they later manipulated their
11 authority to target and retaliate against Plaintiff(s). Defendant(s) Inner
12 Office Memos clearly show their true intentions.

13 Plaintiff(s) intentions on trying to resolve the matter with
14 Defendant(s) was only turned into Plaintiff(s) "making a Beef" against the
15 Clearlake Police Department in which Plaintiff(s) were labeled as Anti-Law
16 Enforcement and a Threat to the Community only because they exercised their
17 right as citizens.

18 Defendant(s) issued Plaintiff(s) numerous moving infractions without
19 verifying the authenticity of the violation. Clearlake Police officers
20 performed no dispatch record check on Plaintiff(s) except for one incident.
21 On August 3, 2006 Plaintiff(s) vehicle was towed alleging Page Gearhart-Davis
22 had no drivers license when in fact her California Drivers License was valid.
23 Clearlake Police Officers were pulling Defendant(s) over alleging they had
24 performed a moving violation when in fact pictures clearly show no infraction
25 was possible.

1 Clearlake Police officer, Sgt. Celli, which is the officer that
2 continues to harass and have officers only on his shift continue his tyrant
3 against Plaintiff(s). Defendant(s) came to Plaintiff(s) home on January 17,
4 2007 alleging a "911 call hang-up" was made from the residence.
5 Defendant(s) have fabricated a "911 Ali Report" when the truth of the matter
6 is a Federal Subpoena issued to Lake County Dispatch clearly shows that there
7 was no 911 call made from Plaintiff(s) home on the date in question.

8 Clearlake Police Officer's records clearly reflect similar misconduct,
9 which has been allowed to continue even though Defendant(s) are aware of
10 these officers behavior.

11 This case is not based on opinion; it is based on facts and evidence
12 that supports Plaintiff(s) claim. Defendant(s) now seek refuge behind
13 immunity, laws that have been written to protect officers whom don't
14 intentionally break the law, and their counsel in which Defendant(s) counsel
15 is relying on cases that have no similarity or bearing on this case.

16 **II. STATEMENT OF RELEVANT FACTS**

17 On August 2, 2006 Plaintiff(s) were approached while pumping gas into
18 their 1967 Mercury Cougar by two officers by the names of Sgt. Celli and
19 Officer Miller. (Ex. 1 at 1:26,2:1-2 and Ex. 2 at 2:4) There is no way you
20 can see a license plate on a Mercury Cougar while pumping gas because you
21 have to turn down the license plate to access where the gas is pumped. (Ex. 3
22 at 28:11-15) After Defendant(s) counsel realized you would not be able to
23 view a license plate on a Mercury Cougar while pumping gas they altered the
24 reason officers approached Plaintiff(s) from approaching because of no
25 visible plates to the cracked windshield. (Ex. 4 and Ex. 5 and Ex. 6 and Ex.

1 7 at 9:21-23)

2 In Officer Todd Miller's Declaration in which he declares to having
3 personal knowledge of the facts and would testify competently if called upon
4 states on August 2, 2006 Plaintiff David Davis was pumping gas into a Mercury
5 Cougar. (Ex. 6 at 1:26-28) But on Officer Todd Miller's interview from
6 IA#08-03-06/90/107/132/145 Officer Miller states David Davis was trying to
7 fill up a five-gallon gas can. (Ex. 8) Officer Miller was questioned by the
8 judge several times in court on December 14, 2006 whether or not he had
9 stopped Plaintiff David Davis while driving or approached him regarding the
10 traffic ticket issued on August 2, 2006, in which Officer Miller could not
11 give a straight answer. (Ex. 9) Plaintiff(s) later sent the audiotape taken
12 in court to an audio expert who analyzed the tape and found the tape to
13 having been altered and punched. (Ex.10)

14 Plaintiff David Davis was asked if the vehicle was his, if he had
15 drivers license, registration, and proof of insurance. (Ex. 1 at 2:2-3 and
16 Ex. 2 - statement neither admitted nor denied) **F.R.C.P. 8(d)** states you are
17 considered to have admitted every statement that you do not specifically
18 deny, except for the amount of damages.

19 Sgt. Celli entered and searched Plaintiff(s) vehicle without
20 Plaintiff(s) consent and without Plaintiff(s) giving him any probable cause
21 for him to do so or before violating Plaintiff(s) **4th & 14th Amendment Right.**
22 (Ex. 1 at 2:8 and Ex. 3 at 53:17-25, 54:1-6)

23 Officer Miller told Plaintiff(s) "we don't like your kind of people" and
24 that Plaintiff(s) "need to move". (Ex. 1 and Ex. 5 and Ex. 6 and Ex. 11)

25 Plaintiff(s) went in and spoke with Capt. Larson later on that morning

1 regarding incident at the gas station on August 2, 2006 to try and resolve
2 the problem. (Ex.1 at 2:11-14 and Ex. 2 at 2:22-23 and Ex. 5) Defendant(s)
3 took Plaintiff(s) forthcoming of trying to resolve the problem as "making a
4 beef" against them. (Ex. 11)

5 On August 3, 2006 Plaintiff(s) were stopped only a few blocks from their
6 home alleging they had run a stop sign, made a turn without signaling, and
7 having an obstructed license plate. (Ex. 1 at 2:17-20 and Ex. 2 at 3:2-3)
8 When Officer Hobbs was questioned in court on December 4, 2006 what was
9 blocking the license plate Officer Hobbs could not recall what it was. (Ex. 1
10 at 2:20-21 and Ex. 9) Officer Hobbs also admitted to being briefed about an
11 incident with an individual from the night before. (Ex. 5)

12 Officer Hobbs claims to have run Plaintiff(s) license before pulling
13 their vehicle over but the time shown on the dispatch report clearly reflects
14 that the Plaintiff(s) license was run after he had pulled them over. (Ex. 12
15 and Ex. 13)

16 Officer Hobbs and Officer Hardesty approached the driver's side and
17 Officer Hobbs immediately started asking Plaintiff David Davis if he had an
18 attitude and why he did not have his seat belt on. (Ex. 1 at 2:21-24)
19 Officer Hobbs asked David Davis for identification, which David Davis
20 provided him with his California Interim Drivers License as DMV clearly
21 states to be used as your temporary identification until your permanent
22 arrives in the mail in four to six weeks. (Ex. 1 at 2:24-26 and Ex. 7 at
23 4:13)

24 The same way Defendant(s) counsel is trying to change the reason for the
25 Plaintiff(s) having been approached at the gas station on 8-2-06, Officer

1 Hobbs also changes his story after he realized David Davis gave him his CA
2 issued Temporary Drivers License (Ex. 12 and Ex. 15)

3 Defendant(s) are clearly trying to cover the use of false detainment,
4 excessive force and illegal search and seizure on Plaintiff(s) in which they
5 violated Plaintiff(s) **4th & 14th Amendments**. Officer Hobbs removed Plaintiff
6 David Davis from the vehicle and purposely placed handcuffs on David Davis to
7 the point where they cut into his wrists. (Ex. 16) Sgt. Celli requested
8 Officer Hobbs to call him regarding the subject, David Davis, which he had in
9 custody to remind him Plaintiff David Davis was anti-law enforcement. (Ex.
10 17)

11 Plaintiff David Davis started having an asthma attack while in the back
12 of the patrol vehicle. Officer Hobbs then pulled David Davis from the
13 vehicle, face down into the dirt, and placed his knee into his back. (Ex. 1
14 at 3:5-10 and Ex. 7 at 4:22-24) Sgt Celli states that Plaintiff David Davis'
15 asthma was "obviously faked" even though Sgt. Celli is neither qualified nor
16 knowledgeable to make a medical physicians diagnosis. (Ex. 17) Plaintiff
17 David Davis is a documented asthma patient and has been diagnosed since a
18 child.

19 Plaintiff(s) vehicle was illegally towed alleging Plaintiff Page
20 Gearhart-Davis did not have a valid driver's license when CA DMV clearly
21 shows she did. (Ex. 18 and Ex. 19) Plaintiff Page Gearhart-Davis gave
22 Officer Hobbs her Florida ID Card as well as her California Driver's License
23 number in which Officer Hobbs claims to have run a record dispatch on both.
24 (Ex. 19 and Ex. 20 and Ex. 12)

25 On August 3, 2008 Plaintiff(s) filed a formal complaint against

1 Defendant(s). (Ex. 5) Plaintiff(s) complaint was never fully investigated
2 because Page Gearhart-Davis was never contacted and questioned even though
3 she was listed as a witness in the claim. **Clearlake Police Department's**
4 **Policy 1020** clearly states the supervisor should make every reasonable effort
5 to speak with witness. The investigation done on this complaint could not be
6 considered as bias because it was conducted by Capt. Ronald Larsen, whom was
7 overheard making racial statements by a Clearlake resident about Plaintiff(s)
8 to Officer Labbe (Ex. 5 and Ex. 21) Officer Labbe also admits to speaking
9 with Capt. Larson regarding the Plaintiff(s) traffic stop on December 27,
10 2006 which is the same date Clearlake resident, Teresa Stacey, states she
11 heard the conversation. (Ex. 23 at 2:25-27, 3:1-6)

12 Officer Hobbs and Sgt. Celli again stopped Plaintiff(s) on September 27,
13 2006 while Plaintiff(s) were operating their off-road motorcycle, which was
14 clearly registered, on private property. (Ex. 24)

15 On December 27, 2006 Plaintiff(s) observed Sgt. Celli and Officer Labbe
16 parked at the intersection of Olympic and Lakeshore, Sgt. Celli and Officer
17 Labbe pulled out two cars behind Plaintiff(s) and once Officer Labbe had the
18 opportunity to get behind Plaintiff(s) he pulled Plaintiff(s) over alleging
19 obstruction of license plates, which was a ball hitch. (Ex. 22) There is no
20 way possible that a ball hitch could obstruct Plaintiff(s) license plates as
21 Officer Labbe alleges (Ex. 25) Which further shows that these officers were
22 instructed to harass and fabricate reasons for pulling the Plaintiff(s) over
23 as Officer Labbe stated that once he realized that he had the Plaintiff(s)
24 pulled over he notified Sgt. Celli even though he was right behind Officer
25 Labbe. (Ex. 22) As soon as Plaintiff(s) realized they were again being

1 pulled over by Sgt. Celli, and on his shift, Plaintiff David Davis told Page
2 Gearhart-Davis to start blowing the horn to get the attention of people in
3 their homes. (Ex. 3 at 95:10-25, 96:1-2) As Sgt. Celli approached the
4 passenger side Plaintiff(s) heard Sgt. Celli dispatching Plaintiff David
5 Davis' name through dispatch. (Ex. 3 at 96:21-24) Sgt Celli stood on the
6 passenger side where Plaintiff David Davis was the whole time with his hand
7 on his firearm (Ex. 1 at 4:20-21 and Ex. 3 at 96:13-19)

8 About a week after the incident of December 27, 2006 Plaintiff(s) once
9 again went in and spoke with Defendant(s) to try and resolve the ongoing
10 matter but it was apparent that the Clearlake Police Departments' intentions
11 were set in stone. (Ex. 22)

12 On the afternoon of January 12, 2007 Sgt. Michael Herman came to
13 Plaintiff(s) home to take their statement for complaint for the incident on
14 December 27, 2006. (Ex. 22) Sgt. Michael Herman did not do a proper
15 investigation on Plaintiff(s) claim because he did not follow the Clearlake
16 Police Departments procedures. **Clearlake Police Department Policy 1020**
17 states that all officers and witness are to be interviewed and recording of
18 that interview is to be taken. Sgt. Michael Herman did not interview nor
19 record Sgt. Celli or Officer Labbe. (Ex. 22) Sgt. Michael Herman has also
20 made false allegations that he came out to the Plaintiff(s) home on January
21 18, 2008 when in fact Plaintiff(s) statement was taken and completed on
22 January 12, 2008. (Ex. 22) Sgt. Michael Herman also claims at the beginning
23 of the recorded interview that Plaintiff David Davis mentions the alleged 911
24 call hang up which in fact you do not hear David Davis making such a
25 statement. (Ex. 26)

1 Clearlake Police Department intentionally concocted a phony 911-dispatch
2 record on December 17, 2008 and used it as their excuse to come to
3 Plaintiff(s) home to further their harassment against Plaintiff(s) in
4 retaliation against the complaints filed about Sgt. Celli violating
5 Plaintiff(s) **4th & 14th Amendment Right** to be safe and secure in their own
6 home. (Ex. 27) The Northern District of California United States District
7 Court issued a Subpoena commanding Lake County Dispatch to produce any 911
8 calls made from Plaintiff(s) home phone during the time period of August
9 2006-June 2007 in which Lake County Dispatch clearly sent a signed Affidavit
10 by Lieutenant Cecil Brown declaring under penalty of perjury that the only
11 record of a 911 call they had made from Plaintiff(s) home during that time
12 period was made on February 10, 2007 when Plaintiff David Davis broke his leg
13 and paramedics were requested by Plaintiff(s). (Ex. 28) Records
14 Communications Supervisor, Nicole Newton, clearly states that the Lake County
15 Sheriffs Department is the designated primary answering point for the County
16 of Lake. (Ex.29) Defendant(s) fabricated 911 Ali Report clearly states it
17 was dispatched out of Lake County. (Ex. 27) This incident further goes to
18 show and prove beyond a reasonable doubt that Sgt. Celli will go to any
19 measure to harass and torment Plaintiff(s) with the department acknowledging
20 and allowing Sgt. Celli to continue his tyrant.

21 Plaintiff(s) have been documented in Defendant(s) system as Anti-Law
22 Enforcement only because Plaintiff(s) have exercised their rights as
23 citizens, or does the United States allow Law Enforcement Agencies have
24 personal vendettas against United States Citizens who committed a couple
25 traffic infractions to be labeled as Anti-Law Enforcement and a threat to the

community, which further violates Plaintiff(s) **4th & 14th Amendment Rights.**
(Ex. 11 and Ex. 30)

III. ARGUMENT

A. Violation of **4th & 14th Amendment**

Plaintiff(s) were approached by Defendant(s) on 8-2-06 while pumping gas into their vehicle and were not committing any crime, which would constitute rise for suspicion of Clearlake Police Officers. (Ex. 1 and Ex. 2) Defendant(s) try to constitute their reason for briefly detaining Plaintiff(s) behind "reasonable suspicion" that Plaintiff(s) had committed or were about to commit a crime under **Terry v. Ohio 392 U.S. 1 (1968)**. (Ex. 7 at 9:5-18) The fact is Plaintiff(s) were detained on 8-2-06 by Defendant(s) because Defendant(s) contend that Plaintiff(s) had no visible license plate on Plaintiff(s) vehicle, when in truth is there is no way Defendant(s) could have visibly seen whether Defendant(s) had a license plate because to pump gas into a 1967 Mercury Cougar you have to turn the license plate down. (Ex. 4 and Ex. 5 and Ex. 6 and Ex. 11) Defendant(s) counsel is now trying to change the reason Defendant(s) approached Plaintiff(s) to Defendant(s) approaching Plaintiff(s) because of a cracked windshield, after Plaintiff David Davis brought it to Defendant(s) counsels' attention during his deposition that there is no way Defendant(s) could have possibly viewed the license plate on 8-2-06 while he was pumping gas. (Ex. 3 and Ex. 7)

On 8-3-06 Defendant(s) detained Plaintiff David Davis for not having any form of identification. (Ex. 12) Plaintiff David Davis provided Defendant(s) with his California Temporary Driver's License, which DMV specifically told him to use as Identification until his permanent Driver's

1 License arrived in the mail in 4 to 6 weeks. (Ex. 14) Defendant(s) then
2 removed Plaintiff David Davis from his vehicle, placed handcuffs on him that
3 were visibly too tight, and placed him in the back of his patrol vehicle.
4 (Ex. 12 and Ex. 16) After Plaintiff David Davis advised Defendant(s) he was
5 having an asthma attack, he was pulled face first onto the ground where
6 Officer Hobbs then placed his knee into his back in which Defendant(s)
7 counsel alleges Officer Hobbs did so in order to remove Mr. Davis's handcuffs
8 and alleviate his asthma symptoms. (Ex. 7 at 12:16-18) Common sense would
9 have told this officer that throwing someone face first in the dirt and
10 putting his knee into the persons back would not alleviate their asthma
11 symptoms rather it would only be harder for the individual to breath while
12 face down in the dirt and applying pressure onto some ones back would only
13 constrict the longs. Defendant(s) counsel sights **Atwater v. City of Lago**
14 **Vista, 532 U.S. 318 and Hupp v. City of Walnut Creek, 389 F.Supp.2d 1229** as
15 justified reason for the arrest and detention of Plaintiff David Davis for
16 not wearing his seat belt. In Atwater's case Texas law provides for police
17 discretion in arresting any person caught committing a misdemeanor, such as
18 violating it's mandatory seat belt laws. In the state of California not
19 wearing a seat belt is violation of California Vehicle Code § 27315(e), which
20 is an only an infraction not a misdemeanor. In the case of Hupp, Hupp
21 refused to sign a "promise to appear", which is why he was arrested.
22 Defendant(s) counsel is sighting cases which have no baring nor similarity to
23 this case.

24 On 8-3-06 Plaintiff Page Gearhart-Davis had a valid California
25 Drivers License. (Ex. 19) Plaintiff(s) vehicle was still illegally searched

1 and towed. (Ex. 18) Plaintiff(s) were both illegally searched on 8-3-06
2 while they were detained by Defendant(s).

3 **B. Racial Profiling**

4 Defendant(s) contend that Plaintiff(s) have produced no evidence of
5 discriminatory intent as stated in *Snowden v. Hughs*, 321 U.S. 1. (Ex. 7 at
6 14:9-10) Plaintiff(s) were approached by Defendant(s) on 8-2-06 while
7 pumping gas into their vehicle where Defendant(s) used the excuse of
8 Plaintiff(s) not having a license plate, when in fact there is no way they
9 could have noticed Plaintiff(s) license plate because when you pump gas into
10 a 1967 Mercury Cougar the license plate is turned down. (Ex. 4 and Ex. 5 and
11 Ex. 6 and Ex. 11) Whether Defendant(s) approached Plaintiff(s) because of
12 their color, their appearance, tattoos, or any other category it is still
13 evident they were profiled by Defendant(s) since they had no reason to
14 approach Plaintiff(s).

15 Defendant(s) claim Officer Miller told Plaintiff(s) "we don't like
16 your kind" and "you need to move" claiming it was said after Plaintiff David
17 Davis called him an "out of shape pig", when in fact Defendant(s) told
18 Plaintiff(s) "we don't like your kind of people" and "You need to move"
19 first. (Ex. 3 at 30:19-25 and 31:1-12)

20 Defendant(s) further claim Plaintiff(s) have turned over no evidence
21 that show Defendant(s) used any racial slurs or epithets at Plaintiff(s) when
22 in fact Plaintiff(s) have already stated and turned over evidence of the
23 conversation Teresa Stacy heard Capt. Larson and Officer Labbe had and
24 Officer Labbe also informed Sgt. Michael Herman he had spoke with Capt.
25 Larson the day after he pulled Plaintiff(s) over. (Ex. 21 and Ex. 22)

1 If a Supervisor at your job were to tell you "I don't you're your
2 kind" and the supervisor admitted to saying it he or she would no longer be a
3 Supervisor at that place of employment. For a person of authority to
4 approach somebody after they move into a residential neighborhood and tell
5 them "you need to move" it would not only be considered a racist statement
6 but more seriously a threat. What Defendant(s) view to be racist or not is
7 merely only their personal opinions.

8 **C. Violation of 42 U.S.C §§ 241 & 1985**

9 Plaintiff(s) are United States Citizens whom are entitled to U.S.
10 Constitutional Laws and Rights. Plaintiff(s) have pointed out from their
11 First Amended Claim and evidence turned over that Defendant(s) employ
12 Officers who have conspired to injure, oppress, threaten and intimidate
13 Plaintiff(s). (Ex. 1)

14 **D. Violation of 42 U.S.C §§ 242 & 1983**

15 **42 U.S.C § 242** states that anybody under the color of law who
16 willfully subjects any person in any state the deprivation of any rights,
17 privileges, or immunities secured or protected by the Constitution or Laws of
18 the United States. As clearly pointed out in above statements Defendant(s),
19 under the color of law, have deprived Plaintiff(s) their rights, privileges,
20 and immunities secured and protected by the Constitution and Laws of the
21 United States. (See Above)

22 **E. Failure to Supervise Officers Adequately**

23 The Clearlake Police Department does not monitor complaints filed
24 against its officers as means of detecting problems before they occur.
25 Clearlake Police Officers with complaint histories can and have been

1 promoted. Some of Clear Lake's own employees went to the Federal Bureau of
2 Investigation regarding corruption within the Clear Lake Police Department.
3 (Ex. 1 at 9:6-11 and Ex. 2 - statement neither admitted nor denied) **F.R.C.P.**
4 **8(d)** states you are considered to have admitted every statement that you do
5 not specifically deny, except for the amount of damages.

6 9 Federal Lawsuits within the last 5 years shows that Clearlake Police
7 Department does not supervise it's officers and clearly shows that The City
8 of Clearlake and it's Official's are fully aware of the ongoing problems.

9 (*Bygum v. City of Clearlake, Griffin v. City of Clearlake C-00-2504,*
10 *Hernandez v. City of Clearlake C-99-3185, Simmons v. City of Clearlake C-98-*
11 *1251 and Vespa v. City of Clearlake C-97-3756*) The City and all it's
12 employees seek refuge behind attorney's and then continue on with the same
13 misconduct.

14 Within the last 5 years Defendant(s) have received numerous complaints
15 against the same Offices in question for the same type of misconduct.

16 (Exhibit E1, Exhibit G1, Exhibit H1)

17 On 6-8-03 Sgt. Celli followed a citizen by the name of Theodore Edwards
18 in his truck, visibly drunk after drinking 7 beers and 3 shots of Tequila
19 that day. (Exhibit E-1) Three Clearlake Police Officers, Officer Carl
20 Miller, Officer Brady and Sgt. Michael Herman all admit to having witnessed
21 Sgt. Celli and did not attempt to stop him from driving. (Exhibit E-1) Sgt.
22 Celli grabbed and shoved Theodore Edwards and then threatened him that he
23 "had better watch his rearview mirror" and that he "was going to have his
24 ass". (Exhibit E-1) Theodore Edwards stated that Sgt. Celli followed him
25 around town and even drove by his house. (Exhibit E-1) Officer Brady stated

1 that he heard Sgt. Celli yelling something at Theodore Edwards and that Sgt.
2 Celli was the aggressor. (Exhibit E-1)

3 On 8-13-07 Officer Hobbs stopped Ryan Buchanan in front of his residence
4 alleging he had turned without signaling and then forcefully removed him from
5 his vehicle and hit him with his baton because of his tattoos. (Exhibit G-1)

6 On 12-28-07 Officer Hobbs had made rude and unprofessional comments to
7 Elizabeth Gomes in which his comments were only made because of her
8 boyfriend. (Exhibit G-1)

9 On July 17th and 18th of 2007 Officer Miller followed Jason Pearce home
10 and harassed him because of his race. (Exhibit H-1) Jason Pearce stated
11 Officer Miller stopped and harassed him again a week after these two
12 incidents. (Exhibit H-1) On 8-4-07 Officer Miller received documented
13 counseling in regards to complaints and interactions with citizens. (Exhibit
14 H-1) Sgt. Rodd Joseph states that he had received three similar complaints
15 on Officer Miller in one month. (Exhibit H-1) Sgt. Celli stated that Officer
16 Miller has a tendency to talk down to people. (Exhibit 11)

17 **IV. CONCLUSION**

18 The Defendant(s) request the Court dismiss Plaintiff(s) First Amended
19 Complaint. The City of Clearlake is merely asking the Court to ignore
20 Plaintiff(s) First Amended Complaint as well as Plaintiff(s) U.S. Civil
21 Rights as United States Citizens. The foundation of Plaintiff(s) claim is
22 not based on opinions but facts. The employees of the City of Clearlake set
23 out to purposely take advantage of their authority.

24 The City of Clearlake as well as the Clearlake Police Department were
25 fully aware of Plaintiff(s) constant harassment by Clearlake Police Officers.

1 Plaintiff(s) wrote newspaper articles regarding Plaintiff(s) problems.
2 Plaintiff(s) had monthly meetings regarding police misconduct. Plaintiff(s)
3 spoke of their problems at City Hall meetings. Plaintiff(s) went into the
4 Clearlake Police Department to try and resolve the matter. Plaintiff(s)
5 wrote letters to the Attorney General. Plaintiff(s) held a meeting at their
6 home along with the Ella Baker Department as well as the Department of
7 Justice. A representative from the Department of Justice by the name of
8 Booker Neal went in to speak with the then Interim Chief of Police about
9 problems Clearlake Citizens were having. Clearlake City Employees even went
10 in and spoke with the Federal Bureau of Investigation about problems they
11 were aware of that were going on.

12 Plaintiff(s) have suffered constant harassment when their intentions
13 were to seek some sort of remedy for stopping Defendant(s) from constantly
14 tormenting and abusing it's authority, yet here the Defendant(s) pray for
15 relief.

16
17
18 Dated this July 22nd, 2008

Respectfully Submitted,


19
20  *Page Gearhart-Davis*
David Davis and Page Gearhart-Davis

Exhibit 1

1 David Davis and Page Gearhart-Davis
2 PRO SE
3 PO Box 3225
4 Clearlake, CA 95422
5 (707) 995-0749

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

8 David Davis and Page Gearhart-Davis

Case No.: C 07-03365 EDL

9 PRO-SE,

FIRST AMENDED COMPLAINT

10 Plaintiff(s),

11 vs.

12 Clearlake Police Department,

13 Defendant(s)

15 Plaintiff David Davis and Page Gearhart- Davis for its Complaint alleges as
16 follows:

17 JURISDICTION

18 The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as
19 this action arises under the laws of the United States Constitution.

20 VENUE

21 Venue is appropriate in this court because both the plaintiffs and the
22 defendants reside in this district, and the acts and omissions giving rise to
23 this lawsuit occurred in this district.

24 ALLEGATIONS

25 1. On 8-2-06 while David Davis and Page Gearhart-Davis where pumping gas into
26

1 their vehicle they were approached by two officers who's names are Officer
2 Miller and Sgt. Celli. David Davis was asked if the vehicle was his, if he
3 had drivers license, registration, and proof of insurance. After David Davis
4 provided the officers with the appropriate information (Exhibit A [Mercury
5 Cougar was sold so David Davis no longer has the registration and
6 insurance]), he asked the officers if they usually approached people while
they pump gas into their cars. Officer Miller stated to David Davis "We
8 don't like your kind", as Sgt. Celli began looking into David Davis vehicle.
9 David Davis was issued a ticket for no registration and a defective
10 windshield (Exhibit B), which later was dismissed in court (Exhibit C).

11 2. The following day David Davis and Page Gearhart-Davis went down to the
12 police station to file a complaint against Officer Miller and Sgt. Celli for
13 racial profiling, harassment, and racial statements. The officer in charge
14 of the day was Capt. Larson, who stated he would speak to his officers about
15 the matter and there was no need for David Davis and Page Gearhart-Davis to
16 file a complaint against Sgt. Celli and Officer Miller.

17 3. Later that same day on the same shift from the night before, David Davis
18 and Page Gearhart-Davis were pulled over again alleging they had ran a stop
19 sign, made a turn without signaling, and having an obstacle blocking the
20 license plate; which later in court the officer did not know what the
21 obstacle was. As Officer Hobbs and Officer Hardisty approached the vehicle,
22 Officer Hobbs instantly asked David Davis if he had an attitude. David Davis
23 did not answer him. Then Officer Hobbs asked David Davis why he did not have
24 a seat belt on. David Davis said he forgot. Officer Hobbs then asked David
25 Davis for some identification. David Davis told him all he had was a DMV
26 print out of his Interim Drivers License (Exhibit A), since his license was

1 recently renewed. In Officer Hobbs' report (Exhibit D), it states David
2 Davis handed him a piece of paper which shows false detainment. Officer
3 Hobbs insisted on photo identification. Officer Hobbs then removed David
4 Davis from the vehicle, placed him in handcuffs, and placed him in the back
5 of his police car. While David Davis was detained in the vehicle, he had an
6 asthma attack. While David Davis was having his asthma attack, the officer
7 from the previous night at the gas station, Sgt. Celli, pulled up. After
8 Sgt. Celli got out of his car, Officer Hobbs pulled David Davis out of his
9 vehicle; while he was still in handcuffs, onto his stomach, and placed his
10 knee into David Davis' back. While David Davis was being detained Officer
11 Hardisty approached Page Gearhart-Davis and asked her for her drivers
12 license, registration, and insurance. Page Gearhart-Davis heard David Davis
13 belling, coughing, and saying he could not breath. Officer Hardisty walked
14 back to where Officer Hobbs and Sgt. Celli were and came back shortly and
15 told Page Gearhart-Davis that everything was alright, that David Davis was
16 having an asthma attack, and that an ambulance was on it's way. The
17 handcuffs were removed minutes before the ambulance arrived. Once David
18 Davis was put into the back of the ambulance to be administered an albuterhal
19 treatment before being sent to the hospital, Sgt. Celli approached the back
20 of the ambulance. At that point, David Davis refused to ride along in the
21 ambulance fearing for his life. David Davis and Page Gearhart-Davis' vehicle
22 was towed due to non-payment of Page Gearhart-Davis' driver license renewal.
23 Page Gearhart-Davis was issued a ticket for driving without a license and
24 turning without using a signal light (Exhibit E). Later in court, the
25 turning without a signal light was dismissed (Exhibit F). David Davis was
26 issued a ticket for not wearing his seatbelt, in which, Officer Hobbs forged

1 David Davis' signature (Exhibit G). Later in court, the ticket for not
2 wearing a seat belt was suspended (Exhibit H).

3 4. After David Davis and Page Gearhart-Davis received these three tickets on
4 the same evening shift, with the same sergeant, Sgt. Celli on command, three
5 more tickets (Exhibit I and J [last ticket is on file with the court because
6 it was a fix-it ticket that was signed by a Lake Co. Sheriff]) were given on
7 this same shift to David Davis and Page Gearhart-Davis under the direction of
8 Sgt. Celli. At every single stop that was made Sgt. Celli was always present
9 or called out to the scene, showing a pattern of constant harassment, which
10 left David Davis and Page Gearhart-Davis in fear to leave their home during
11 Sgt. Celli's evening shift.

12 5. On December 27, 2006, David Davis and Page Gearhart-Davis observed Sgt.
13 Celli and Officer Labbe parked at the intersection of Lakeshore and Olympic.
14 As David Davis and Page Gearhart-Davis turned at the intersection of Olympic
15 and Lakeshore, David Davis and Page Gearhart-Davis observed Officer Labbe and
16 Sgt. Celli pull out and were two cars behind them. As David Davis and Page
17 Gearhart-Davis turned onto Pomo Street Officer Labbe and Sgt. Celli got
18 directly behind David Davis and Page Gearhart-Davis' vehicle and pulled them
19 over. Officer Labbe approached the driver's side of Page Gearhart-Davis and
20 Sgt. Celli approached the passenger side of David Davis. Sgt. Celli stood at
21 David Davis' side with his hand on his gun. Page Gearhart-Davis asked
22 Officer Labbe what they were pulled over for. Officer Labbe said for not
23 using a turn signal and for the ball hitch obstructing the license plate.
24 Page Gearhart-Davis gave Officer Labbe her driver license, insurance, and
25 registration (Exhibit K-M). While Officer Labbe went back to his vehicle
26 Sgt. Celli remained on David Davis' side with his hand on his gun. When

1 Officer Labbe returned, he gave Page Gearhart-Davis a ticket alleging
2 obstruction of license plate, expired registration, which had just expired on
3 December 22, and a non-operative tale light.

4 6. The following day, David Davis and Page Gearhart-Davis received a phone
5 call from another resident of Clear Lake, Teresa Stacey. Teresa Stacey
6 informed Page Gearhart-Davis she had heard a conversation at the police
7 station between Officer Labbe and Capt. Ron Larsen in regards to the incident
8 from the night before (Exhibit N).

9 7. During the course of August 2006 to December 2006 David Davis and Page
10 Gearhart-Davis, along with other witnesses and neighbors, observed Sgt. Celli
11 constantly riding past David Davis and Page Gearhart-Davis' home. On one
12 occasion Sgt. Celli came to David Davis and Page Gearhart-Davis' home,
13 shining lights into their windows, and alleged they had received a 911 phone
14 call from David Davis and Page-Gearhart-Davis' home (on video). Later when
15 Page Gearhart-Davis called the Lake County Sheriff's dispatch, which is where
16 the officer Sgt. Celli was with said the 911 call was dispatched from, they
17 had no record of a 911 call from the landline at David Davis and Page
18 Gearhart-Davis' home.

19 8. After David Davis and Page Gearhart-Davis' second encounter with the
20 police of August 3, David Davis and Page Gearhart-Davis organized monthly
21 meetings with the community of Clear Lake regarding police misconduct
22 (Exhibit O), which later, the Department of Justice also became involved.
23 Current and past employees within the Clearlake Police Department have also
24 come forward regarding misconduct and unlawful acts within the department.
25 While Judy Thein; now mayor of Clear Lake, was running for office one of her
26 main platforms was getting rid of the 'good old boys' (Exhibit P).

1 9. Violation of Civil Rights under the Conspiracy Against Rights of Citizens,
2 18 U.S.C. § 241

3 Sgt. Celli and other Clear Lake Police Officers conspired under the direct
4 supervision of Sgt. Celli to injure, oppress, threaten, and intimidate David
5 Davis and Page Gearhart-Davis. The pattern of harassment, which only occurred
6 on Sgt. Celli's shift, at which each encounter Sgt. Celli was present, caused
7 David Davis and Page Gearhart-Davis to feel threatened and intimidated by
8 Clearlake Police officers. David Davis and Page Gearhart-Davis were
9 oppressed and were fearful to leave their home during Sgt. Celli's shift.

10 10. Violation of Civil Rights under the Deprivation of Rights Under Color of
11 Law, 18 U.S.C. § 242

12 Sgt. Celli and other Clear Lake Police Officers under color of law willfully
13 subjected David Davis and Page Gearhart-Davis to the deprivation of their
14 rights and privileges secured and protected by the Constitution, and to
15 punishments, pains, and penalties by reason of David Davis and Page Gearhart-
16 Davis' color and race. On August 2-06, Sgt. Celli and Officer Miller
17 approached and harassed David Davis and Page Gearhart-Davis only because of
18 their color and race. The following evening Officer Hobbs, under the
19 direction of Sgt. Celli, continued with such harassment of David Davis and
20 Page Gearhart-Davis. Officer Hobbs also falsely detained David Davis after
21 he showed him his only form of identification, his Interim Driver License,
22 since his license was recently renewed. Officer Hobbs used excessive force
23 upon David Davis when he pulled him out of the back of his police car while
24 in hand cuffs, onto his stomach, and putting his knee into David Davis' back,
25 while David Davis was having an asthma attack. Officer Hobbs forged David
26 Davis signature to the ticket he gave David Davis and then fabricated a

1 report about the incident, which later was signed by Sgt. Celli.

2 11. Violation of Civil Rights under the Law Enforcement Misconduct Statute, 42

3 U.S.C. § 14141

4 David Davis and Page Gearhart-Davis were living in Clear Lake for over a year
5 and never encountered any form of harassment until 8-2-06. The pattern of
6 Sgt. Celli's excessive harassment shows his intentions were completely
7 directed to threaten and intimidate David Davis and Page Gearhart-Davis. The
8 harassment David Davis and Page Gearhart-Davis experienced did not come to a
9 stop until a representative from the Department of Justice became involved
10 and spoke with the interim Chief of Police regarding the Clearlake Police
11 Officers' misconduct.

12 12. Violation of Civil Rights under the Civil Action For Deprivation of

13 Rights, 42 U.S.C. § 1983

14 Each Clear Lake Police Officer involved in this misconduct should be held
15 responsible for their actions and involvement in which this complaint clearly
16 points out the harassment of these officers on Sgt. Celli's shift.

17 13. Violation of Civil Rights under the Conspiracies to Interfere With Civil

18 Rights, 42 U.S.C. § 1985

19 After being harassed numerous times on Sgt. Celli's night shift, David Davis
20 and Page Gearhart-Davis were intimidated and felt in fear to leave there
21 home. After David Davis and Page Gearhart-Davis filed complaints for some
22 sort of relief, David Dais and Page Gearhart-Davis found it only made matters
23 worse, Clear Lake Police Officers retaliated against complaints filed about
24 their misconduct.

25 14. Violation of the United States Constitution, Forth Amendment

26 David Davis and Page Gearhart-Davis were approached by Officer Miller and

1 Sgt. Celli on 8-2-06 and unlawfully questioned while David Davis and Page
2 Gearhart-Davis were pumping gas into their vehicle. The following evening of
3 8-3-06 Officer Hobbs unreasonably searched David Davis after falsely
4 detaining him. Officer Hardisty unreasonably searched Page Gearhart-Davis
5 after asking her to leave her vehicle so it could be towed.

6 15. Violation of the United States Constitution, Fourteenth Amendment

7 David Davis and Page Gearhart-Davis were deprived their liberty to leave
8 their home during Sgt. Celli's shift because of all the undue harassment
9 which always occurred during his evening shift. All the harassment David
10 Davis and Page Gearhart-Davis received from Sgt. Celli and other officers on
11 his shift started in August-06 and ended in December-06, only after a
12 representative from the Department of Justice spoke with the Interim Chief of
13 Police about his involvement with what was going on. Because of the
14 excessive force used by Officer Hobbs on 8-3-06 on David Davis, David Davis
15 and Page Gearhart-Davis were in fear of their lives every time after they
16 were stopped by Clear Lake Police Officers.

17 16. Use of Excessive Force, False Detainment, Forged Documents

18 Clearlake Police Department officers used excessive force when falsely
19 detaining David Davis in violation of the Forth and Fourteenth Amendments to
20 the United States Constitution. Clearlake Police Department Officers have
21 used racial epithets or racially insensitive language directed against David
22 Davis and Page Gearhart-Davis. Complaints filed against the Clearlake Police
23 Department by David Davis and Page Gearhart-Davis have resulted in no
24 discipline being imposed against any Clearlake Police Officer.

25 17. Failure to Investigate Complaints Properly

26 The Clearlake Police Department gives greater weight to the statements of its

1 police officers, while discounting statements of witnesses for the complaint,
2 does not fully collect all evidence during its investigations, and does not
3 consider an officer's prior complaint history in its investigation. Clear
4 Lake Police Officers are being hired and promoted without the proper
5 qualifications or requirements and training.

6 18. Failure to Supervise Officers Adequately

7 The Clearlake Police Department does not monitor complaints filed against its
8 officers as a means of detecting problems before they occur. Clearlake
9 Police Officers with complaint histories can and have been promoted. Some of
10 Clear Lake's own employees went to the Federal Bureau of Investigation
11 regarding corruption within the Clear Lake Police Department.

12 RELIEF

13 (A) Compensation for punitive damages due to; but not limited to, violation of
14 Civil Rights, violation of Constitutional Rights, racial profiling, false
15 detainment, excessive force, illegal search and seizure, name forgery,
16 falsifying police reports, harassment, stress, and humiliation.

17 (B) Any officers to be found guilty of any civil or criminal charges to be
18 prosecuted.

19 (C) Conduct a full investigation into the Clear Lake Police Department and
20 Employees (past and present).

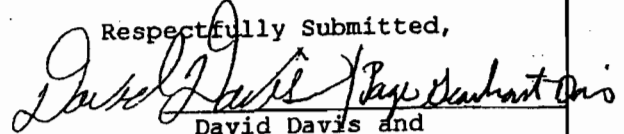
21 (D) Grant such other and additional relief as this Court may deem just and
22 proper.

23 Trial By Jury

24 Plaintiff, David Davis and Page Gearhart-Davis, request a jury trial pursuant
25 to Rule 38, Section B of The Federal Rules of Civil Procedure.

1 Dated: 8-22-07

Respectfully Submitted,



David Davis and
Page Gearhart-Davis

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Exhibit 2

DALE L. ALLEN, JR., # 145279
DIRK D. LARSEN, # 246028
LOW, BALL & LYNCH
505 Montgomery Street, 7th Floor
San Francisco, California 94111-2584
Telephone (415) 981-6630
Facsimile (415) 982-1634

Attorneys for Defendant
CITY OF CLEARLAKE
(erroneously named herein as CLEARLAKE POLICE DEPARTMENT)

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID DAVIS and PAGE GEARHART-DAVIS
PRO-SE,

Plaintiffs,

vs.

CLEARLAKE POLICE DEPARTMENT,

Defendants.

Case No. C 07-03365 EDL

DEFENDANT CITY OF
CLEARLAKE (erroneously named
herein as CLEARLAKE POLICE
DEPARTMENT)'S ANSWER TO
VERIFIED FIRST AMENDED
COMPLAINT; DEMAND FOR
JURY TRIAL

Comes now defendant City of Clearlake , erroneously named herein as Clearlake Police
Department, and in answer to the verified first amended complaint on file herein admits, and alleges as
follows:

1.

In answer to the allegations on page 1, lines 18-19 of the complaint, this defendant has no
information or belief to enable it to answer said allegations, and for that reason and basing its denial on
that ground, denies both generally and specifically, each and every, all and singular, the allegations
contained therein.

2.

In answer to the allegations on page 1, lines 21-23 of the complaint, this defendant has no
information or belief to enable it to answer said allegations, and for that reason and basing its denial on

1 that ground, denies both generally and specifically, each and every, all and singular, the allegations
2 contained therein.

3.

4 In answer to the allegations of ¶1, pages 1:26-2:2 ending with "Celli" of the complaint, Admit. ← B-1

5.

6 In answer to the allegations of ¶1, page 2:3 at "After" and ending at line 8 with "vehicle." of the
7 complaint, this defendant has no information or belief to enable it to answer said allegations, and for that
8 reason and basing its denial on that ground, denies both generally and specifically, each and every, all
9 and singular, the allegations contained therein.

10.

11 In answer to the allegations of ¶1, page 2:9 ending at page 2:10 at "Exhibit B" of the complaint,
12 Admit.

13.

14 In answer to the allegations of ¶1, page 2:10 at "which" and ending at "Exhibit C" of the
15 complaint, this defendant has no information or belief to enable it to answer said allegations, and for that
16 reason and basing its denial on that ground, denies both generally and specifically, each and every, all
17 and singular, the allegations contained therein.

18.

19 In answer to the allegations of ¶2, page 2:11 ending at page 2:13 at "statements" of the
20 complaint, Admit.

21.

22 In answer to the allegations of ¶2, page 2:13 at "The" and ending at page 2:14 at "Larson" of the
23 complaint, Admit. ← B-

24.

25 In answer to the allegations of ¶2, page 2:14 at "who" and ending at page 2:16 of the complaint,
26 this defendant has no information or belief to enable it to answer said allegations, and for that reason and
27 basing its denial on that ground, denies both generally and specifically, each and every, all and singular,
28 the allegations contained therein.

10.

In answer to the allegations of ¶3, page 2:17 ending at page 2:20 at "plate" of the complaint, Admit.

11.

In answer to the allegations of ¶3, page 2:20 at "which" and ending at page 2:21 at "was" of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denial on that ground, denies both generally and specifically, each and every, all and singular, the allegations contained therein.

12.

In answer to the allegations of ¶3, page 2:21 at "As" and ending at page 2:24 at "forgot" of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denial on that ground, denies both generally and specifically, each and every, all and singular, the allegations contained therein.

13.

In answer to the allegations of ¶3, page 2:24 at "Officer" ending at page 2:25 at "identification" of the complaint, Admit.

14.

In answer to the allegations of ¶3, page 2:25 at "David" and ending at page 3:3 at "identification" of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denial on that ground, denies both generally and specifically, each and every, all and singular, the allegations contained therein.

15.

In answer to the allegations of ¶3, page 3:3 at "Officer" ending at page 3:5 at "car" of the complaint, Admit.

16.

In answer to the allegations of ¶3, page 3:5 at "While" ending at page 3:22 at "renewal" of the complaint, this defendant has no information or belief to enable it to answer said allegations, and for that reason and basing its denial on that ground, denies both generally and specifically, each and every,

1 all and singular, the allegations contained therein.

2 17.

3 In answer to the allegations of ¶3, page 3:23 at "Page" ending at page 3:24 at "Exhibit E" of the
4 complaint, this defendant has no information or belief to enable it to answer said allegations, and for that
5 reason and basing its denial on that ground, denies both generally and specifically, each and every, all
6 and singular, the allegations contained therein.

7 18.

8 In answer to the allegations of ¶3, page 3:24 at "Later" and ending at page 3:25 at "Exhibit F" of
9 the complaint, this defendant has no information or belief to enable it to answer said allegations, and for
10 that reason and basing its denial on that ground, denies both generally and specifically, each and every,
11 all and singular, the allegations contained therein.

12 19.

13 In answer to the allegations of ¶3, page 3:25 at "David" and ending at page 4:2 at "Exhibit H" of
14 the complaint, this defendant has no information or belief to enable it to answer said allegations, and for
15 that reason and basing its denial on that ground, denies both generally and specifically, each and every,
16 all and singular, the allegations contained therein.

17 20.

18 In answer to the allegations of paragraph 4 of the complaint, this defendant has no information or
19 belief to enable it to answer said allegations, and for that reason and basing its denial on that ground,
20 denies both generally and specifically, each and every, all and singular, the allegations contained therein.

21 21.

22 In answer to the allegations of paragraph 5 of the complaint, this defendant has no information or
23 belief to enable it to answer said allegations, and for that reason and basing its denial on that ground,
24 denies both generally and specifically, each and every, all and singular, the allegations contained therein.

25 22.

26 In answer to the allegations of paragraph 6 of the complaint, this defendant has no information or
27 belief to enable it to answer said allegations, and for that reason and basing its denial on that ground,
28 denies both generally and specifically, each and every, all and singular, the allegations contained therein.

1 23.

2 In answer to the allegations of paragraph 7 of the complaint, this defendant has no information or
3 belief to enable it to answer said allegations, and for that reason and basing its denial on that ground,
4 denies both generally and specifically, each and every, all and singular, the allegations contained therein.

5 24.

6 In answer to the allegations of paragraph 8 of the complaint, this defendant has no information or
7 belief to enable it to answer said allegations, and for that reason and basing its denial on that ground,
8 denies both generally and specifically, each and every, all and singular, the allegations contained therein.

9 25.

10 In answer to the allegations of paragraph 9 of the complaint, this defendant denies both generally
11 and specifically, each and every, all and singular, the allegations contained therein.

12 26.

13 In answer to the allegations of paragraph 10 of the complaint, this defendant denies both
14 generally and specifically, each and every, all and singular, the allegations contained therein.

15 27.

16 In answer to the allegations of paragraph 11 of the complaint, this defendant denies both
17 generally and specifically, each and every, all and singular, the allegations contained therein.

18 28.

19 In answer to the allegations of paragraph 12 of the complaint, this defendant denies both
20 generally and specifically, each and every, all and singular, the allegations contained therein.

21 29.

22 In answer to the allegations of paragraph 13 of the complaint, this defendant denies both
23 generally and specifically, each and every, all and singular, the allegations contained therein.

24 30.

25 In answer to the allegations of paragraph 14 of the complaint, this defendant denies both
26 generally and specifically, each and every, all and singular, the allegations contained therein.

27 31.

28 In answer to the allegations of paragraph 15 of the complaint, this defendant denies both

1 generally and specifically, each and every, all and singular, the allegations contained therein.

2 32.

3 In answer to the allegations of paragraph 16 of the complaint, this defendant denies both
4 generally and specifically, each and every, all and singular, the allegations contained therein.

5 33.

6 In answer to the allegations of paragraph 17 of the complaint, this defendant denies both
7 generally and specifically, each and every, all and singular, the allegations contained therein.

8
9 FIRST AFFIRMATIVE DEFENSE

10 AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

11 That plaintiffs assumed the risk of any injuries and/or damages resulting from the matters set
12 forth in said complaint, and that said assumption of risk by plaintiffs was a cause of the injuries and/or
13 damages alleged by plaintiffs, if any there were.

14 SECOND AFFIRMATIVE DEFENSE

15 AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
16 ALLEGES:

17 That plaintiffs were themselves negligent and careless in and about the matters and events set
18 forth in the complaint, and that said negligence contributed to their alleged injuries and/or damages. A
19 verdict of the jury in favor of plaintiffs, if any, which may be rendered in this case must therefore be
20 reduced by the percentage that plaintiffs' negligence contributed to the accident and injuries complained
21 of, if any there were.

22 THIRD AFFIRMATIVE DEFENSE

23 AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

24 That the complaint does not state facts sufficient to constitute a cause of action against this
25 answering defendant.

26
27 //

28 //

1 FOURTH AFFIRMATIVE DEFENSE

2 AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
3 ALLEGES:

4 Plaintiffs' cause of action is barred by reason of the provisions of California Code of Civil
5 Procedure sections 335.1, 340 and 343.

6 FIFTH AFFIRMATIVE DEFENSE

7 AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:
8 Plaintiffs failed to mitigate their damages.

9 SIXTH AFFIRMATIVE DEFENSE

10 AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:
11 Plaintiffs were guilty of willful misconduct and wanton and reckless behavior in and about the
12 matters and events set forth in said complaint; and that said willful misconduct and wanton and reckless
13 behavior contributed to the injuries and damages alleged, if any there were.

14 SEVENTH AFFIRMATIVE DEFENSE

15 AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
16 ALLEGES:

17 Prior to the time when defendant is alleged to have committed the acts complained of, plaintiffs
18 invited, gave permission to, and consented to the acts alleged in the complaint. Each of the acts alleged
19 in the complaint, which acts are expressly denied, was done within the scope of this consent and
20 permission.

21 EIGHTH AFFIRMATIVE DEFENSE

22 AS AND FOR A EIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
23 ALLEGES:

24 Should plaintiffs recover non-economic damages against any defendant, the liability for non-
25 economic damages is limited to the degree of fault and several liability of said defendant pursuant to
26 Civil Code section 1431.2 and a separate, several judgment shall be rendered against said defendant
27 based upon said defendant's degree of fault and several liability.

28 //

1 NINTH AFFIRMATIVE DEFENSE

2 AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES:

3 Defendant's alleged employees mentioned in plaintiffs' complaint were, at all times, duly
4 qualified, appointed and acting police officers of City of Clearlake and peace officers of the State of
5 California and in accordance with the Constitution of the United States and the State of California and
6 the laws of the United States and the laws of the State of California; and at all times mentioned herein,
7 said officers were engaged in the performance of their regularly assigned duties within the scope of their
8 duties as peace officers of the City of Clearlake.

9 TENTH AFFIRMATIVE DEFENSE

10 AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
11 ALLEGES:

12 This answering defendant acted in good faith and with a reasonable belief that the actions were
13 lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a
14 breach of any duty owed to plaintiffs.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
17 ALLEGES:

18 The acts of this answering defendant was lawful and proper and in all respects was reasonable
19 and legal.

20 TWELFTH AFFIRMATIVE DEFENSE

21 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
22 ALLEGES:

23 In this connection probable cause existed to believe that plaintiffs had committed a public
24 offense and, therefore, probable cause existed to detain and/or arrest plaintiffs.

25 THIRTEENTH AFFIRMATIVE DEFENSE

26 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
27 ALLEGES:

28 At all times relevant to this litigation, plaintiffs were subject to restraint as was reasonably

1 necessary for their detention and/or arrest.

2 FOURTEENTH AFFIRMATIVE DEFENSE

3 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
4 ALLEGES:

5 At all times relevant to this litigation, reasonable cause existed to believe that plaintiffs had
6 committed a public offense and, therefore, reasonable force was used to effect plaintiffs' arrest, to
7 prevent escape or to overcome resistance.

8 FIFTEENTH AFFIRMATIVE DEFENSE

9 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
10 ALLEGES:

11 At all times relevant to this litigation, plaintiffs consented either expressly or impliedly, to any
12 such acts or conduct as may be shown on the part of this answering defendant.

13 SIXTEENTH AFFIRMATIVE DEFENSE

14 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
15 ALLEGES:

16 This answering defendant is immune from liability pursuant to the provisions of §§ 815, 815.2,
17 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government Code of the State of
18 California.

19 SEVENTEENTH AFFIRMATIVE DEFENSE

20 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANT
21 ALLEGES:

22 The facts alleged in the Complaint do not involve any custom, practice, procedure or regulation
23 of defendant, which gives rise to a violation of a constitutional right pursuant to Monell v. New York
24 City Department of Social Services, 436 U.S. 658 (1978).

25
26 **JURY DEMAND**

27
28 Defendants hereby demand a jury trial in this action.

1
2 WHEREFORE, defendant prays that plaintiffs takes nothing by way of the complaint on file
3 herein and that defendant has judgment for its costs, attorneys' fees and for such other and further relief
4 as the court deems proper.
5

6 Dated: October 18, 2007.

7 LOW, BALL & LYNCH

8
9 By /s/ Dale L. Allen, Jr.

10 DALE L. ALLEN, JR.

11 DIRK D. LARSEN

12 Attorneys for Defendant

13 CITY OF CLEARLAKE
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Exhibit 3

Golden Gate Reporting

Page 1

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

David Davis and Page Case No.: C 07-3365 EDL
Gearhart-Davis PRO SE,

Plaintiffs,

vs.

Clearlake Police
Department,

Defendant.
_____ /

DEPOSITION OF DAVID DAVIS

DATE: May 6, 2008

TIME: 10:33 a.m.

LOCATION: 600 Administration Drive
 Law Library, Room 213 J
 Santa Rosa, California 95401

REPORTED BY: Cindy L. Boccaleoni
 Certified Shorthand Reporter
 License Number 12987

Golden Gate Reporting

Page 2

A P P E A R A N C E S

For the Plaintiffs:

David Davis, Pro Se

P.O. Box 3225
Clearlake, California 95422

For the Defendants:

DALE L. ALLEN, JR., ESQ.

LOW, BALL & LYNCH
505 Montgomery Street, 7th Floor
San Francisco, California 94111-2584
(415) 981-6630
(415) 982-1634
DAllen@lowball.com

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Golden Gate Reporting

Page 3

I N D E X

EXAMINATION BY:

PAGE:

MR. ALLEN

4

E X H I B I T S

Defendant's Exhibit:

None marked

Golden Gate Reporting

Page 28

1 have to take into account that, hey, a person
2 that's been in that situation avoids police
3 officers and any confrontations with the police.
4 That's obvious. That's just from experience.
5 Hey, I don't want no problem with the police
6 officers, you know.

7 So hey, I provided them with everything
8 that was required, you know. Celli says, "Hey"
9 -- all he wanted to know, "Hey, man. Where is
10 your license plates?"

11 Well, in fact, there's no way you can
12 see the license plates on a 1967 Cougar. There's
13 no way possible because in order to pump gas into
14 a 1967 Cougar, the license plates have to be
15 folded down, which the statements was later
16 changed in -- what was the officer's name, the
17 officer that was with Celli that night? Miller,
18 the same officer who altered a tape from a court.

19 So, you know, it's not like, you know, I
20 approached these officers and just immediately
21 start harassing them. I've never in my life
22 heard of anybody being approached while pumping
23 gas into a vehicle.

24 And hey, "We don't like you kind of
25 people out here." I understand you're an

Golden Gate Reporting

Page 30

1 incident itself in a little more detail.

2 A. All right.

3 Q. One of the officers came up. You can't
4 remember which of the two first approached you.
5 And they -- according to your complaint, you said
6 they asked for your driver's license,
7 registration and proof of insurance?

8 A. Yes.

9 Q. Prior to them -- that officer asking you
10 for that, did he say anything else to you? Did
11 he say anything to you first?

12 A. About the whole incident, the way he
13 approached me was, "Hey, is this your car? Do
14 you live out here? What are you doing out here?"
15 This is how the whole conversation started.
16 There was no conversation about no license plates
17 until after the whole fact, after they searched
18 my vehicle and everything.

19 Q. All right. So first officer comes up
20 and says, "Is this your car? Do you live out
21 here? What are you doing out here?" What did
22 you say back?

23 A. I told him I just moved out here.

24 Q. Then what did the officer do?

25 A. Got out of the car, started looking

Golden Gate Reporting

Page 31

1 around the car. By this time the other officer
2 walked up, looking around the car, looking inside
3 the car. And at this time, this is when all the
4 verbal exchange -- verbal words started being
5 exchanged. "Well, hey, we don't like you kind
6 out here."

7 And I asked him, "Well, what do you
8 mean, my kind, my kind of people? What are you
9 trying to say?" I took that offensively.

10 Q. Okay. Let me --

11 A. I admit that. I took that very
12 offensively.

13 Q. What I want to do is just go step by
14 step at the moment, all right, so you get a
15 chance to explain all of this. I'm going to go
16 step by step.

17 You mentioned that the first officer
18 comes up and asks you some questions about your
19 car and where you live, and you say you just got
20 out here. You said that he got out of his car.
21 Did that first officer drive his car over towards
22 you, or did he walk over towards you?

23 A. To be honest with you, I can't recall.

24 Q. Okay. After he walked over to you and
25 asked you the question and you said you just

Golden Gate Reporting

Page 53

1 Q. Can you think of anything else that
2 occurred that night right then and there before
3 the officers left that we haven't talked about?
4 For example -- let me go back -- did the officers
5 ever lay hands on you that night at that first
6 stop, search you?

7 A. Well, he told me to sit on the curb,
8 which I refused to sit on the curb.

9 Q. All right. Did he make you sit on the
10 curb by putting his hands on you?

11 A. No. He told me, "You need to sit on
12 that curb over there."

13 Q. And you refused?

14 A. And I told him, "I ain't sitting on no
15 curb. I didn't do nothing to deserve to sit on
16 no curb."

17 Q. Did he search you that night?

18 A. He searched my vehicle.

19 Q. Did he actually physically go in the
20 vehicle or walk around the vehicle and shine his
21 light into the vehicle?

22 A. He went and looked in my vehicle.

23 Q. Did he open the doors?

24 A. The door was already -- the driver's
25 side door was already open.

Golden Gate Reporting

Page 54

1 Q. Did he stick his head in the car?

2 A. Yes, he did.

3 Q. Did he move anything around?

4 A. No, he looked in. I was standing at the
5 trunk. All I seen was this officer looking
6 around all inside my vehicle.

7 Q. Did you ever see him put his hands on
8 any of your items --

9 A. I couldn't even see him. I was standing
10 at the rear of the vehicle.

11 Q. Did Miss Davis ever tell you she saw the
12 officer move any items in your car around?

13 A. You would have to ask her that.

14 Q. I think you answered this, but did you
15 ever see him open the glove box or any portion of
16 your car?

17 A. I couldn't see him. I just seen --
18 while I'm talking to the officer -- say, me and
19 him talking. The car's right here. I look back;
20 I see this officer looking all inside my car
21 through the driver's side. I don't -- I didn't
22 consent to no search.

23 MR. ALLEN: Why don't we take a break so
24 you can move your car.

25 (Recess).

Golden Gate Reporting

Page 95

1 vehicle not even 30 days previous to that. And I
2 thought -- apparently I was under the wrong
3 assumption that when a tag says like, expires
4 June of '07 --

5 Q. Mm-hmm.

6 A. -- at the end of June it expires, so
7 come July, you're --

8 Q. That's -- that's a specific date.

9 A. Right. That was my assumption of...

10 Q. Tell me what Celli was doing with his
11 hand on the gun when he was next to you.

12 A. The whole time he was just standing on
13 the passenger side right on my window with his
14 hands on his gun. And when we first pulled up, I
15 told Page, "Immediately start blowing the horn."
16 The people directly in front came outside and
17 watched the whole thing.

18 Q. Did you get their names?

19 A. I have that. I'll submit all that.

20 Q. Do you have the names of the people?

21 A. I don't have their names. I went by
22 their house, spoke with them. She's contacting
23 her son, who actually witnessed the whole thing,
24 so...

25 Q. So the son witnessed it?

Golden Gate Reporting

Page 96

1 A. Matter of fact, Celli told him to go
2 back in the house.

3 Q. Do you remember the address?

4 A. I can get the address for you.

5 Q. And there was a young man that watched
6 this?

7 A. A young man and a woman.

8 Q. Can you tell me about how old they were?

9 A. No, I couldn't. All I can do is tell
10 you they were European Caucasians.

11 Q. I mean, were they adults or teenagers?

12 A. Adults. Adults.

13 Q. When Celli was standing there with his
14 hand on his gun, what was he doing? Did he have
15 it around the grip? Did he ever take it out?
16 What did you see?

17 A. No, he didn't take it out. He just had
18 his hand placed on it, like, "Move, I'll bust a
19 cap on you."

20 Q. Okay. Did he ever say anything to you?

21 A. No, the whole time he didn't say -- oh,
22 as a matter of fact, he ran my name through a
23 dispatch because I heard it through his little
24 walkie-talkie.

25 Q. He never spoke to you, but you overheard

Exhibit 4

CLEARLAKE POLICE DEPARTMENT CA0170200
TRAFFIC STOP (60802006)CN NONE
Page 1CODE SEC: 4000A VC Unregistered vehicle
SECONDARY: 26710 VC Defective windshield

DATE/TIME REPORTED: Wed. 08/02/06 01:27 hrs.

DATE/TIME OCCURRED: Wed. 08/02/06 01:27 hrs.

LOCATION OF OCCURENCE: 15010 LAKESHORE DR

BLOCK AREA: 24

SUSPECT-1: DAVIS, DAVID MARSHALL BM32 (07/08/74) 995-0749
OTHER ROLES: DRIVER
ADDRESS: 3225 2ND STREET, Clearlake, CA 95422
DL NO./STATE: D5847841/CA AR NO.: 0
RACE: Black SEX: M HT: 507 WT: 189 HAIR: BLK EYES: BRO

VEHICLES INVOLVED:

SUSPECT-1: GLD /GLD 1967 MERC COU CP 2SCBYDO CA 2/ 6
Involved Vehicle, Refer to narrative

DETAILS OF INVESTIGATION:

TRAFFIC STOP NOTES:

ON 8-2-06 AT ABOUT 0125 HOURS, SGT CELLI AND I HAD JUST COMPLETED A TRAFFIC STOP ON PAUL DAWSON IN THE PARKING LOT OF THE FLYERS GAS STATION. THERE WAS A GOLD MERCURY COUGAR IN THE PARKING LOT ADJACENT TO PUMP NUMBER EIGHT AND FACING TOWARDS LAKESHORE DRIVE. THE VEHICLE HAD NO PLATES ON IT AND THERE WAS NO TEMPORARY TAG IN THE WINDOW.

SGT CELLI DROVE OVER TO THE VEHICLE AND SPOKE TO DAVID MARSHALL DAVIS FROM HIS PATROL CAR. I COULD NOT TELL WHAT THEY WERE SAYING BUT IT WAS APPARENT THAT SGT CELLI WAS INVESTIGATING FURTHER. HE GOT OUT OF HIS PATROL CAR SO I DROVE OVER WHERE THEY WERE AT.

I APPROACHED DAVID MARSHALL DAVIS WHO WAS ACCOMPANIED BY A FEMALE WHO SAID SHE WAS HIS WIFE. DAVID MARSHALL DAVIS WAS ANGRY AND MADE ACCUSATIONS THAT WE WERE HARRASSING HIM SOLELY BECAUSE HE WAS BLACK. DAVID MARSHALL DAVIS SAID THAT HE WAS ALWAYS BEING STOPPED AND HARASSED BECAUSE HE WAS A BLACK MAN IN NICE CAR. INITIALLY, I THOUGHT THAT DAVID MARSHALL DAVIS WAS A PACIFIC ISLANDER.

SGT CELLI ASKED DAVID MARSHALL DAVIS ABOUT HIS VEHICLE AND WHY IT DID NOT HAVE ANY PLATES ON IT. HE SAID THAT THE PAPERWORK WAS IN THE MAIL.

WHILE THIS CONVERSATION WAS GOING ON, I NOTICED THAT THE WINDSHIELD OF THE VEHICLE WAS CRACKED HORIZONTALLY THROUGH THE DRIVER'S FIELD OF VIEW. A REGISTRATION CHECK REVEALED THAT THE VEHICLE REGISTRATION WAS EXPIRED IN 2005 AND THERE WAS A REGISTRATION IN PROCESS AS OF FEBRUARY 2006.

CLEARLAKE POLICE DEPARTMENT CA0170200
TRAFFIC STOP (60802006)CN NONE
Page 2

DAVID MARSHALL DAVIS CONTINUED AN ACCUSATORY INSULTING TIRADE. HE ACCUSED SGT CELLI AND I OF BEING RACISTS AND SAID THAT HE WAS GOING TO COMPLAIN TO THE N.A.A.C.P.. HE REFERRED TO SGT CELLI AND I AS PIGS AND HE MADE NUMEROUS COMMENTS ABOUT MY "BUILD". WE TRIED TO EXPLAIN TO DAVID MARSHALL DAVIS THAT WE WOULD STOP ANYONE WHO DID NOT HAVE PLATES ON THE VEHICLE OR A TEMPORARY REGISTRATION CARD AND THE STOP HAD NO RACIAL MOTIVATION.

DAVID MARSHALL DAVIS SAID THAT HE WAS ANGRY ABOUT BEING ASKED IF HE WAS ON PAROLE OR PROBATION AND THAT WE WERE BEING RACISTS FOR ASKING HIM THIS QUESTION. HE THEN TOLD US THAT HE HAD DONE PRISON TIME AND HE WAS OFF PAROLE. HIS DEMEANOR CHANGED FROM SOMEBODY WHO WAS ABSOLUTELY INSULTED BY EVEN BEING THOUGHT OF AS A PERSON WHO MAY HAVE COMMITTED A CRIME IN THE PAST, TO A PERSON THAT WAS BRAGGING ABOUT BEING A VIOLENT CONVICTED FELON.

IT WAS APPARENT TO ME THAT DAVID MARSHALL DAVIS WAS NOT GOING TO BE RECEPTIVE TO A WARNING ABOUT THE REGISTRATION AND THE WINDSHIELD. I ISSUED HIM A CITATION FOR THE VIOLATION AND ADVISED HIM THAT HE COULD NOT DRIVE THE CAR AFTER 48 HOURS UNLESS HE WAS ENROUTE TO AN AUTO REPAIR FACILITY.

CLOSED WITH CITATION ISSUED

REPORTED: 08/02/06 by OFFICER TODD MILLER
RECORDED: 08/02/06 by SHERRI D VANNEST
REVIEWED: by

INCIDENT: 60802006
SUPPLEMENT: 0

Follow up? Yes/ /No/ /Copies to: DET./ / PROBATION . LCSO/ /OTHER/ /

CLE 0004

Exhibit 5



CLEARLAKE POLICE DEPARTMENT INTEROFFICE MEMORANDUM

Robert "Bob" Chalk
Chief of Police

DATE: *August 29, 2006*

TO: *Chief of Police Robert Chalk*

FROM: *Captain Ron Larsen*

SUBJECT: *LA# 08-03-06/90/107/132/145*

Complaint Information:

Complainant:

David Davis DOB: 07-08-74
P.O. Box 3225
Clearlake, Ca. 95422
995-0749

Officers Involved:

Sergeant Tim Celli
Officer Todd Miller
Officer Tim Hobbs
Officer Sarah Hardisty

Officers Representative:

Todd Simonson, Atty at Law
Rains, Lucia and Wilkinson
2300 Contra Costa Blvd, Suite 230
Pleasant Hill, Ca 94523
(925)609-1690

On August 3, 2006, Sergeant Clausen took the attached personnel complaint form from Mr. David Davis. Mr. Davis, in his complaint, is alleging that on two different occasions, officers harassed, offended and generally picked on him, also alleging that the incidents were racially motivated.

On August 2, 2006, Mr. Davis came to the police department and I spoke with he and his wife. He was alleging then that the officers had harassed him at Flyers that morning, and written him a ticket, and made inappropriate comments to him. He stated that the officers had someone else stopped when he pulled in, and claimed that they let that person go in order to bother him. He stated that they began to question him as to what he was doing there, where he lived, if he was on probation or parole. He also said that one officer told him that he did not like, "your kind of people". And that he could not wait 49 hours. (Reference to a citation issued for a defective windshield.) Mr. Davis initially stated that he wanted to file a complaint against the

(2)

officers. He also told me that he had previously been stopped and warned about the violations on the vehicle. I asked him if he knew the names of the officers, and he stated that he did not. I asked him if he had the ticket that he was issued and he told me that he had thrown it away. The description he was able to provide of the officers identified them as Sgt. Celli and Officer T. Miller.

Mr. Davis then told me that he would not file a complaint against the officers if he had the opportunity to speak with them and try to straighten the situation out. He left the station.

I left a note for Sergeant Celli advising him of Davis' contentions, and that he would like to speak to him and Officer T. Miller. Sgt. Celli left me a note the next morning, declining to meet with Davis, and outlining the events of the night before as he had seen them. (Attached)

On August 3, 2006, Davis returned to the police department and wanted to file a formal complaint. I had Sgt. Clausen sit down with him and take his complaint. (Attached) I also asked Sgt. Clausen to prepare a memorandum for me concerning his contact with Davis that day. (Attached)

In his written complaint, Mr. Davis alleges that the contact August 2, 2006 (Celli and T. Miller) was "offending". Though in the written complaint he does not go into as much detail as he did when he spoke with me. He did state "...I responded as well by calling this officer names, only a out of shape pig and from this point the 2 officers proceeded to harass me...." He stated that he left with a ticket for no tags and a damaged windshield.

He goes on to state that he and his wife were pulled over the next night "in retaliation". He stated that he was asked about his seat belt, had the handcuffs placed on him extremely tight, and placed in a police vehicle, where he had an asthma attack. Upon the arrival of rescue personnel he refused to go to the hospital, "because I was in fear for my life". He stated that he had "scares" (scars) from the handcuffs.

The officer who stopped Mr. Davis on 8-3-06 was Officer Hobbs. Officer Hardisty arrived on the scene shortly after the stop, though Mr. Davis does not mention Officer Hardisty in any manner in his complaint. Sergeant Celli arrived sometime later, upon learning the Officer Hobbs was in contact with Mr. Davis.

Regarding the first incident with Mr. Davis, Sergeant Celli completed the attached memorandum, and forwarded it to me, along with a copy of Officer Todd Miller's notes from the computer system regarding the stop. Officer Miller's notes are under the incident number with no case number assigned. This is a common practice for Officer Miller to make notes concerning his citation under the incident number, to have a reference should the citation be contested in court. Both of these documents are attached to this report.

Sergeant Celli also forwarded me a memorandum concerning the stop of Mrs. Davis, with Mr. Davis as passenger on 8-3-06 by Officer Hobbs. Celli also provided me with a tape recording of the contact with Davis on 8-3-06 which he initiated upon his arrival at the scene. In addition, Officer Hobbs prepared report #06-2456 concerning the incident. (both attached).

Investigation

On August 8, 2006 I noticed Sergeant Celli, Officer T. Miller, Officer Hobbs, and Officer Hardisty of the complaint and subsequent investigation. Copies of said notices are attached.

I reviewed again the complaint by Mr. Davis and compared the complaint with the information he had verbally provided to me concerning the incident on August 2nd. The information contained on his written complaint was less detailed than that he had verbally given me.

Based on police logs, and the information provided to me by Sergeant Celli, I was able to identify the involved officers as Sgt. Celli, Off's T. Miller, Hobbs, and Hardisty.

On August 11, 2006, I noticed the above officers of the date and times that they are to report to the police department to be interviewed in relation to this investigation. The date of the interviews is tentatively set for Thursday, August 24th, 2006, with the times varying from 1:00 p.m. to 3:10 p.m.

On August 22, 2006, I confirmed with all four officers' LDF representative, Todd Simonson that he would be available for the scheduled interviews with the officers on August 24, 2006.

(3)

Sergeant Celli, Officers T. Miller, Hardisty and Hobbs were all interviewed regarding this complaint on Thursday, August 24th, 2006 at the Clearlake Police Department. The four employees were all represented by LDF panel attorney Todd Simonson. All four employees were given a "Lybarger" admonition, ordering them to answer questions regarding this investigation and complaint. All signed the printed admonition, as did Mr. Simonson. All of the interviews were recorded by both myself and Mr. Simonson. Mr. Simonson retained possession of his recordings, and mine have been included with this file.

Sergeant Tim Celli was interviewed first. In synopsis, Sergeant Celli told us that he had been covering Officer Todd Miller on a traffic stop at the Flyers gas station when this incident occurred in the early morning hours of August 2, 2006. He stated that Miller had stopped and was issuing a citation to a P.J. Dawson. As the stop was completed he drove through the lot of the station and saw an older Cougar with no plates or stickers on it. He said he drove over and asked the male by the vehicle something like, "What happened to your plates?" He stated that the response was similar to, "I am tired of you guys fucking with me." Sgt. Celli said that he then got out of his car and was going to further the contact with this individual (Mr. Davis). Officer Miller also approached their location then. Sergeant Celli stated that during this contact/investigation of the vehicle status Mr. Davis was "constantly chipping", using foul language and seemed to focus on the stature of Officer Miller, telling him he should be "ashamed" calling him a "short fat pig". I asked him if Officer Miller had told Davis that "his kind" of people around here, and he stated that Officer Miller did say that. I asked him to explain the context and he said that Davis said that "there are more people like me coming here", and Officer Miller told he that "we don't want more people like you", to which Davis immediately responded, "Black people" and began calling them racists some more. Sergeant Celli then explained that Officer Miller told him he was talking about people with bad attitudes, and continued to try to explain, but Mr. Davis kept calling them racists. I then asked him to explain the comment about "cant wait 49 hours" made by Officer Miller. Sergeant Celli explained that Officer Miller had told Davis that the vehicle could not operated after 48 hrs., except to a repair shop, due to the defective windshield. He said that Officer Miller made some comment about not wanting to see the vehicle on the road after 48 hours. He stated that both he and Officer Miller cleared the stop then, as Mr. Davis had received his citation, and their business was done, though Davis continued, "chipping."

Sergeant Celli was also present on August 3, 2006 for part of the interaction with Mr. Davis and Officer Hobbs. He advised me that he had heard Officer Hobbs run a check on Mr. Davis over the radio. He spoke with Officer Hobbs on the phone and advised him to record his contact with Davis. He said that Officer Hobbs told him at that time that Mr. Davis was not cooperative, and had been detained in handcuffs. Hobbs also told him that he did not have a recording device. Sgt. Celli then stated that he heard Officer Hobbs call for rescue, so he asked Hobbs if he needed assistance, and he told him that he did. Sergeant Celli then responded to the location of the stop, arriving before rescue personnel. Sergeant Celli stated that upon his arrival at the scene Mr. Davis was next to the patrol car kneeling on the ground and breathing heavily. He stated that he asked Officer Hobbs what happened and was told that as he was preparing to release him Davis complained of an asthma attack, so he called rescue. Sgt. Celli stated that Davis was not handcuffed at this time. Celli said that Officer Hardisty was also present at the stop, but he witnessed no interaction between Hardisty and Mr. Davis.

I asked Sgt. Celli if Mr. Davis was in the same vehicle as the previous night, he stated that "no" they were in white Suburban, and he assumes that Mrs. Davis had been driving, as she had been cited by Officer Hobbs for being an unlicensed driver. Sgt. Celli said that rescue personnel arrived about 5 minutes after he had. He also said that Mr. Davis was refusing to sign the citation, and that he explained to him that if he refused to sign he would be taken to jail. Davis eventually signed the citation. He was walked over to the ambulance, and refused medical aid or transport, and at this time he appeared to be physically fine. Mr. and Mrs. Davis left the scene of the stop shortly thereafter.

I asked Sergeant Celli if the two memorandums provided to me under his signature were his, and if the information in each memo was accurate. He stated that they were accurate. I asked if either he or his representative had any objection to my inclusion of the memorandums with the I.A. investigation, and there was no objection, hence both memorandums by Sergeant Celli are incorporated into this report and investigation.

(4)

I next interviewed Officer Sarah Hardisty, again in the presence of Mr. Simonson. Officer Hardisty stated that she was on duty on August 3, 2006 in the early morning hours, and that she was in the final phase of her field training program, with Officer Hobbs as her training officer. She was in her own car, with Officer Hobbs acting as a "shadow" officer. She stated that when Officer Hobbs stopped the Davis' she responded to the location of the stop, arriving within 1 ½ and two minutes after the stop.

When she arrived, Mr. Davis was still seated in the passenger side of the car, and she approached that side of the car, as Hobbs was at the drivers side. She stated that Mr. Davis appeared agitated, and was fumbling around with something in the glove box. She said that Officer Hobbs came around to the passenger side of the car and had him get out, too him back to the patrol car and handcuffed him, placing him in the rear of the patrol car.

Officer Hardisty stated the Mr. Davis took a couple of deep breaths and said he may have an asthma attack. Officer Hobbs took him out of the patrol car and uncuffed him. She said he then fell to the ground, and they called for rescue. Mr. Davis made a statement that he was diagnosed as a paranoid schizophrenic and asthmatic. Officer Hardisty stated that she did not see any signs of distress present in Mr. Davis.

Officer Hardisty said that prior to rescue arriving at the scene she took the citation that Officer Hobbs had completed for Mrs. Davis and had her sign the citation.

I asked Officer Hardisty to describe the vehicle that the Davis' were in and she stated that it was a white SUV type vehicle. I then asked her if she knew or was familiar with Mr. or Mrs. Davis, and she stated that she was not. I then asked her if anyone had pointed out the Davis', described either of them to her, and or suggest that she stop, harass, arrest, or cite either of them? She stated "no". I also asked her if any of the officers present did anything out of line in the handling of the stop of the Davis', and she again stated "no".

Officer Tim Hobbs was interviewed next, again in the presence of Mr. Simonson. Hobbs stated that he had been on duty on August 3, 2006 in the early morning hours. He stated that Officer Hardisty arrived at the location of the stop within about a minute of his stopping the vehicle. He stated that he stopped Mr. and Mrs. Davis in the area of Modoc and Sonoma for expired registration, a stop sign violation, and not using the turn signal. Hobbs also stated that upon approaching the vehicle, a white Suburban, that he noticed that the male passenger was not wearing a seat belt. The female driver produced a Florida I.D. card, and stated that she was unlicensed. Hobbs then attempted to identify the male for the seat belt violation, and he told Hobbs that he had no I.D. Officer Hobbs said that he asked the passenger a couple more times for his name, with no response, then he mumbled something like, "what the fuck". He also made some type of comments about being harassed. Eventually the passenger handed him some type of court paper and said, "get if from there".

At this time Officer Hobbs went around the car and had the passenger exit the vehicle, detained and handcuffed him and placed him in the rear of the patrol car, to facilitate his identification. He finally identified himself as Davis with a date of birth, so Hobbs ran both of them. Mr. Davis began complaining of an asthma attack, and said he needed to go to the hospital. He also stated that he was a paranoid schizophrenic. Hobbs called for rescue to respond.

Officer Hobbs said that Sgt. Celli called him on the cell phone and told him that there had been an incident the previous night with Davis, and told Hobbs he should record their encounter. Hobbs did not have a recorder. Officer Hobbs said that he had Mr. Davis get out of the car and removed one of the handcuffs, and he began jerking around and fell to the ground, and Hobbs was finally able to remove the other handcuff. He also completed a citation for Mr. Davis for not wearing the seatbelt. Upon the arrival of rescue personnel Mr. Davis refused transport or medical aid. Mr. Davis eventually signed the citation, and he and his wife left the area.

Officer Hobbs said that upon the arrival of Sgt. Celli Mr. Davis made some derogatory remark about seeing Sergeant Celli again.

I asked Officer Hobbs if he was familiar with or knew either Mr. or Mrs. Davis prior to the stop, and he stated that he did not. I also asked him if anyone had pointed out either Mr. or Mrs. Davis or described him or her to him and suggest that he stop, harass, arrest, or cite either one of them, and he stated "no". I asked Officer Hobbs if he had taken any action with Mr. Davis because of his race/ethnicity that he would not have taken with anyone else, and he stated "no". He also stated that he had been made aware at briefing that there had been some type of incident with an individual the night before, but that he did not know who it was with, or what it was really about.

(5)

I then asked Officer Hobbs if he had been working the night before (August 2nd, 2006) and he stated that he had not, that it was his night off.

Officer Hobbs had prepared CPD report #06-2456 regarding this encounter. I asked him if the report was true and accurate, and he indicated that it was. I asked if he or his representative had an objection to this report being included as part of the I.A., and neither objected.

The final interview was with Officer Todd Miller, again with his representative, Todd Simonson. Officer Miller indicated that he was on duty in the early morning hours of August 2, 2006. I asked him to explain his presence at the Flyers station early that morning. He indicated that he had made a traffic stop in the parking lot and was in the process of issuing a citation. I asked him about the contact with Mr. Davis. He told me that he was finishing or had just finished the traffic citation, when Sergeant Celli made contact with a male near a gold Cougar in the lot. Officer Miller said that Celli was talking to the male from inside his patrol car, then he exited the car. He then drove over and joined Sgt. Celli. He said that he noticed that the Cougar had no plates or window sticker, and a cracked windshield.

Officer Miller stated that Mr. Davis was confrontational from the beginning of the contact. He said that Sgt Celli asked Mr. Davis if he was on probation or parole, and Davis' response was to accuse the officer of picking on him because he was "a black man with a nice car".

Officer Miller said that Mr. Davis told him he had been warned several times about the car, so it was apparent to Officer Miller that being warned about the violations was not sufficient for him to get it repaired, so he felt a citation was in order. Officer Miller stated that Mr. Davis told him the "you guys need to change your ways, there are more people like me coming up here all the time". Officer Miller said that he replied by saying "We don't want people like you here", to which Mr. Davis replied, "Black"? to which Officer Miller stated that he replied "no, confrontational and violating the laws." He also said that he admonished Mr. Davis about driving the car after 48 hours with the defective windshield, and that it would be cited and towed.

I asked Officer Miller if he took any action or made any comments to Mr. Davis because of his race/ethnicity that he would not have made to anyone else, and he told me, "no".

I then asked Officer Miller to detail from me his normal practice after issuing a citation for making notes of the contact/cite for later use. He told me that he will almost always make a narrative entry under the incident number issued for the citation. I asked him if he did so in this case, and he stated that he had. I then showed him the incident print out for the citation issued to Mr. Davis and asked him if it was his, and accurate. He stated that it was. Neither he nor his representative objected to the inclusion of the incident report with this investigation.

I further asked him if he had prepared a similar documentation regarding the citation he had issued just prior to the contact with Mr. Davis, and he stated that he believed he did. I showed him a print out of incident #60802005 and asked him if that were a copy of those notes, and he stated that it was. Once again that document is included in this report without objection.

We then discussed the citation he issued just prior to the contact with Mr. Davis. Officer Miller indicated that the citation was issued for no current registration and for no proof of insurance. Mr. Davis was cited for an unregistered vehicle and a defective windshield. In both instances the contacts were made for the registration violations, and both drivers were ultimately issued citations for similar offenses. Mr. Davis' contended that he was harassed because of his race. The first citation was issued to Paul J. Dawson, who is a white male.

Analysis:

Ronald D. Larsen- Captain